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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

TRACY P.,

Petitioner,

v.

THE SUPERIOR COURT OF THE
COUNTY OF SAN BERNARDINO,

Respondent;

SAN BERNARDINO COUNTY
DEPARTMENT OF CHILDREN'S
SERVICES,

Real Party in Interest.

E035058

(Super.Ct.No. J180661)

OPINION

ORIGINAL PROCEEDING; petition for extraordinary writ. Robert G. Fowler,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Petition denied.

Alvarenga & Drake and William E. Drake for Petitioner Tracy P.

No appearance for Respondent.

Ronald D. Reitz, County Counsel, and Phebe W. Chu, Deputy County Counsel,
for Real Party in Interest.

Petitioner, the mother of Erica P., challenges the juvenile court's decision to terminate reunification services and set a hearing to consider whether to terminate her parental rights. (Welf. & Inst. Code, § 366.26.)¹ For the reasons set forth below, we deny the petition.

STATEMENT OF FACTS

Erica was detained shortly after her birth in February 2002. The Department of Children's Services (DCS) believed Erica was at risk because both she and petitioner tested positive for methamphetamines and because two of petitioner's other children were dependents of the court. At the February 22, 2002, detention hearing, the juvenile court ordered Erica to be removed from petitioner and detained by DCS in foster care. However, the court allowed Erica and older half-brother Jeffery to be placed with petitioner in the mother/child inpatient rehabilitation program called Prototypes.

At the April 8, 2002, jurisdiction and disposition hearing, the court declared Erica to be a dependent child and found true various allegations, including that: 1) petitioner suffers from a substance abuse problem and had exposed Erica to methamphetamine in utero as late as the day she was born; 2) petitioner failed to protect Erica from neglect in

¹ All further section references are to the Welfare and Institutions Code unless otherwise indicated.

that petitioner had not sought prenatal care, had made no preparations for Erica's birth, and lived in a filthy and inadequate motel room; and, 3) petitioner had abused or neglected Erica's half-siblings in that they are dependents of the court and petitioner had not made appropriate child care arrangements for them during Erica's birth. The court ordered Erica returned to petitioner's custody on condition that they both remain at Prototypes, along with Erica's half-brother, Jeffery. Family maintenance services were to be provided.

The social worker's report dated October 8, 2002, recommended that family maintenance services be continued and that Erica remain with petitioner at Prototypes. However, the report contained serious concerns about petitioner's progress and ability to parent. The staff at Prototypes reported "numerous" concerns about petitioner's "discipline, care, and motivation to provide a safe environment for her children," including lack of basic hygiene for herself and the children, her inability to deal with Jeffery's violent behavior (sometimes directed at Erica), and petitioner's mental and physical abuse of Jeffery while at Prototypes. This was all despite the considerable assistance Prototypes was providing to petitioner in dealing with her children. At the time of the report, Jeffery had been removed from petitioner's care at Prototypes and placed in foster care.

At the October 9, 2002, six-month review hearing, the juvenile court ordered an additional six months of family maintenance services and continued Erica in petitioner's care at Prototypes.

On November 7, 2002, DCS filed a subsequent petition on Erica (§ 342). Erica was removed from petitioner at petitioner's request and placed in foster care on November 5, 2002. Petitioner stated that the demands of caring for Erica were preventing her from benefiting from drug rehabilitation at Prototypes. At the January 13, 2003, disposition and jurisdiction hearing, petitioner signed a Waiver of Rights. The juvenile court declared Erica a dependent child and ordered reunification services. The court explained to petitioner that if she was not ready to have Erica returned to her by the next court date in six months, the court would set a hearing to determine a permanent plan for Erica. Counsel for petitioner, DCS, and the children, along with the juvenile court, all agreed that the next hearing would be the permanency review hearing (§ 366.22), at which either Erica and Jeffery would be returned to petitioner or steps would be taken to formulate a permanent plan.

The social worker's July 10, 2003, report for the permanency review hearing recommended terminating reunification services and setting a permanency planning hearing pursuant to section 366.26. Although petitioner was at that time "clean and sober . . . compliant with psychotropic medications," and had completed most of the service plan objectives, she had not yet obtained safe and adequate housing, despite prompting and suggestions from the social worker.

The case was sent for mediation. At the contested permanency review hearing on July 28, 2003, the parties informed the court that DCS had agreed to a four-month extension of reunification services with the goal of reunifying petitioner with Erica and

Jeffery at the end of that time period. Among other goals, by the end of four months petitioner was to obtain adequate housing, specifically a mobile home in the same park as Erica's maternal grandmother. Petitioner agreed that if she did not accomplish the case plan by that time, Erica's case would go to permanency planning (§ 366.26).

At the end of the four months, the social worker recommended terminating reunification services with regard to Erica and setting a permanency planning hearing because: 1) the promised trailer was never made livable, and petitioner was living in a motel room; 2) the maternal grandmother turned out not to be the anticipated source of stability, support and transportation to help petitioner reunify with her children; 3) during supervised visitation, petitioner was unable to protect Erica from Jeffery;² and, 4) petitioner was not able to transition beyond unsupervised visits at the DCS office.

At the January 6, 2004, contested hearing, the trial court indicated that the hearing was being conducted as to Erica pursuant to section 366.21, subdivision (f), not 366.22. That is, the court treated the hearing as a 12-month review hearing rather than a permanency review hearing. Petitioner testified that she had obtained and moved into a one-bedroom trailer that was being built into two bedrooms and was "not in that bad a

² At the time of the report (November 26, 2003), the plan was for petitioner to reunify with five-year-old Jeffery as Jeffery's only alternative to an anticipated life in a series of foster care placements and group homes. The social worker felt that this arrangement, along with making Erica available for adoption, was each child's best chance at permanency. The plan for Jeffery was later changed to long-term foster care, with the social worker citing stating that the "previous recommendation was made with an overabundance of optimism regarding [petitioner's] ability to care for the child."

shape” and that it had water and electricity. However, she had not yet determined whether and how the propane worked. The trailer was located in a rural desert area about one mile from the nearest bus stop. Petitioner did not own a car, and her sole source of income was SSI for mental health issues. Petitioner also testified that her two oldest children, ages 14 and 13, had recently come to live with her and a third 11-year-old child was staying with her while on school break. The social worker’s report indicated that petitioner had planned to move into the trailer on January 1, 2004.

The social worker testified that Erica had been out of petitioner’s care for over a year, and there was not a strong parent-child bond between the two of them. “There is very little mother-child interaction between the two of them” during visits at the DCS office. Petitioner had recently left some of the later unsupervised visits with Erica early to run errands, and was not willing to deal with Erica when the child is cranky, but rather would give her back to the foster mother. Further, petitioner would often take Erica into the DCS lobby and watch her play with other children rather than engaging her directly.

The juvenile court concluded that to return Erica to petitioner would create a substantial risk of detriment to her and ordered reunification services terminated. The court set a permanency planning hearing (§ 366.26) for May 4, 2004.

DISCUSSION

Petitioner argues that the trial court erred when it failed to extend reunification services for an additional six months on top of the 12 months already provided.

Petitioner contends that, pursuant to section 366.21, subdivision (g)(1), there was a

substantial probability that she could complete her reunification plan and obtain custody of Erica if she were allowed additional time and services.

DCS responds that Erica was already at the permanency review hearing and that, pursuant to section 366.22, the court's only options were to return Erica to petitioner immediately or set a permanency planning hearing under section 366.26 to determine whether adoption, guardianship or long-term foster care was the most appropriate plan.

In addition, though neither of the parties addresses it, Erica was eight and one-half months old when she was removed from petitioner's custody on November 5, 2003. Because she was under three years old at that time, reunification services were not to exceed six months. (§ 361.5, subd. (a)(2).)

Even under the scenario suggested by petitioner, i.e., that the January 6, 2004, hearing was a 12-month review hearing under section 366.21, subdivision (f), the juvenile court did not err when it declined to extend reunification services for an additional six months. Section 366.21, subdivision (g) provides that the court may extend reunification services only if there is a substantial probability that the child will be returned to the parent's custody within the extended period of time based on the following factors: the parent's consistent and regular contacts and visits with the child; the parent's significant progress in resolving the problems leading to the child's removal; and, the parent's ability to complete the reunification plan and provide for the child. We uphold a trial court's findings under section 366.21 if supported by substantial evidence. (*In re Shaundra L.* (1995) 33 Cal.App.4th 303, 316.)

The record contains ample evidence that there was no substantial probability that Erica would be returned to petitioner's custody if petitioner were to receive six more months of services. This is based on petitioner's failure to obtain safe and adequate housing (as set forth in the reunification plan) even after being given a six-month extension from January to July 2003, and then a four-month extension from July to November 2003, plus the additional two months it took to schedule the January 6, 2004, hearing. At the time of the January hearing, the trailer that petitioner had promised to have ready for Erica to occupy in November 2003 was apparently still not connected to propane so that the trailer could be heated during the cold high desert winter. Nor did the trailer have sufficient rooms to house petitioner, Erica, and petitioner's two other children who had come to live with her. Finally, the social worker's report expressed concern that petitioner would be living so far from public transportation, and, since the four-month extension of services in July 2003, petitioner had had difficulty in obtaining the anticipated transportation from nearby relatives in order to obtain mental health services and visit with Erica and Jeffery. Overall, given petitioner's difficulty in obtaining safe and adequate housing and access to transportation, even after being given multiple extensions of time to do so, the record revealed no substantial probability that she would be able to complete the case plan and be reunified with Erica if given yet another six months of reunification services.

DISPOSITION

The petition is denied.

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/s/ McKinster
Acting P. J.

We concur:

/s/ Richli
J.

/s/ Ward
J.